

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the Decision of the
Universal Service Administrator by
Hickory City School District
Hickory, NC
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-418720, 424869, 426048,
426432, 429552
CC Docket No. 02-6

ORDER

Adopted: June 16, 2006

Released: June 16, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order, we grant the Request for Review filed by Hickory City School District (Hickory City) seeking review of a decision by the Universal Service Administrative Company (USAC) denying Hickory City discounted services under the schools and libraries universal service support mechanism (E-rate program).1 USAC denied Hickory City's Funding Year 2004 funding requests after Hickory City failed to respond to USAC's selective review data request by the USAC-designated deadline.2 For the reasons discussed below, we grant the request for review and remand this case to USAC for further consideration consistent with this Order. We also direct USAC to complete its review of this application and issue an award or denial based on a complete review and analysis no later than 60 days from release of this Order.

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connection services.3 To ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, Commission rules require applicants to certify that they will have the necessary resources to finance both the non-discounted portion of the price of eligible services and whatever their technology plans indicate they need, in terms of equipment, training, and other resources, to be able to effectively use the discounted services.4 That is, applicants must ascertain the costs of the products and services they need to support effective usage and then certify that they have identified funding sources that will enable them to purchase those products and services, as well as the non-discounted portion of the price

1 Letter from Nathaniel Hawthorne, on behalf of Hickory City School District, to Federal Communications Commission, filed August 17, 2004 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Hickory City School District, dated June 22, 2004 (FCDL).

3 47 C.F.R. §§ 54.501-503.

4 See 47 C.F.R. § 54.508(a)(3), (4).

of eligible services.⁵ Support for eligible services is conditional upon the applicant securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to effectively use the services purchased.⁶

3. On February 4, 2004, Hickory City filed eight applications seeking 72 percent E-rate discounts on approximately \$900,000 in services.⁷ On April 30, 2004, USAC sent Hickory City a request for data as part of a “selective review,” requesting a full response by May 14, 2004.⁸ On April 30, Hickory City acknowledged receipt of the selective review materials and committed to respond by a May 14, 2004 deadline.⁹ When no response was forthcoming, USAC sent a second request on May 17, 2004, setting a new May 21, 2004, deadline. When there was no response by the second deadline, USAC denied the funding requests based on Hickory City’s failure to demonstrate that it would have sufficient resources to effectively use its eligible services.¹⁰

4. Hickory City states that it did not respond to the selective review funding requests, but identifies mitigating circumstances to explain its lack of response. Specifically, Hickory City explains that it relied on procedures it followed for a previous selective review request, for which USAC appeared to require it to provide data that was not available until the close of its fiscal year.¹¹ Based on that experience, Hickory City states that it was waiting for the close of its fiscal year so that it could provide the data that it believed USAC wanted.¹² On June 25, 2004, after receiving a letter denying it E-rate funds, Hickory City explained this to USAC.¹³

⁵ See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471), item 25; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, 13 FCC Rcd 24493 (1997), *affirmed in part, reversed in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15830-31, paras. 65-66 (2004).

⁷ See Hickory City’s FCC Form 471 applications 418720, 424869, 426048, 426432, 429552, 433213, 433230, and 433287. Hickory City subsequently cancelled applications 433213 and 433287 (seeking discounts on approximately \$668,000 in services). It is only appealing five of the remaining six applications, totaling approximately \$180,000.

⁸ See Facsimile from Al Arauz, USAC, to Jeff Tice, Hickory City, time stamped, April 30, 2004, 9:54 am. Selective reviews are used by USAC to ensure that applicants are following certain FCC program rules. Those applicants selected by USAC for the review are asked to provide documentation regarding 1) their competitive bidding and vendor selection process; 2) their ability to pay their share of the cost of the products and services eligible for schools and libraries program support; and 3) their possession of the other resources necessary to make effective use of the requested discounts. See USAC, School and Library Applicants, Step 8, Undergo Application Review, <http://www.universalservice.org/sl/applicants/step08/>.

⁹ See Universal Service Administrative Company, Schools and Libraries Division, Selective Review Activity, FY2004, BEN 127046 (showing contacts made April 30, 2004 – September 7, 2004) (noting a voicemail message from Jeff Tice, Hickory City, to USAC, April 30, 2004).

¹⁰ See FCDL.

¹¹ Request for Review at Exh. A (Email from Jeff Tice, Hickory City, to Al Arauz, USAC, dated June 25, 2004).

¹² *Id.*

¹³ *Id.*

5. After weighing Hickory City's failure to respond to the selective review request against the circumstances surrounding this failure to respond and the severity of denying Hickory City's funding request in total, we find that Hickory City should be given another opportunity to demonstrate that it had sufficient resources available to effectively use its eligible services, as required by Commission rules. Therefore, we now grant Hickory City's appeal and remand these applications to USAC. We direct USAC to give Hickory City 15 days to submit the relevant data so that USAC can complete its selective review. If USAC finds that the five Hickory City applications at issue here were filed consistent with E-rate program rules, it should grant them.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Hickory City School District on August 17, 2004 IS GRANTED and REMANDED to USAC for further consideration consistent with this Order.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL COMPLETE its review of these applications and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from release of this Order.

8. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau